

MEETING MINUTES CITY OF MILPITAS

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, March 17, 2009
Time: 6:30 PM
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

ROLL CALL

Mayor Livengood called the meeting to order at 6:31 PM.

PRESENT: Mayor Livengood, Vice Mayor McHugh, Councilmembers Giordano, Gomez and Polanski

ABSENT: None

CLOSED SESSION

Mayor Livengood stated the City Council would convene to Closed Session to discuss labor negotiations with employee group International Association of Firefighters (IAFF), Local 1699.

City Council convened in Open Session at 7:00 PM.

CLOSED SESSION ANNOUNCEMENT

None

PLEDGE

Boy Scouts Troop No. 92 presented the colors and led all in the Pledge of Allegiance.

MINUTES

Motion: to approve the City Council meeting minutes of March 3, 2009, as submitted

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

SCHEDULE OF MEETINGS

Motion: to approve Council Calendar/Schedule of Meetings for March 2009, as amended

Councilmember Polanski noted she attended with the Vice Mayor a joint MUSD/City communication meeting where it was determined that the joint meeting of both bodies would be held on Tuesday, March 31 at 7:00 PM at the Milpitas Unified School District Board room.

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

PRESENTATION

Mayor Livengood proclaimed the month of March in honor of "Colorectal Cancer Awareness Month" and the proclamation would be mailed to the American Cancer Society.

PUBLIC FORUM

Paul Yang, Milpitas resident, spoke to the Council on behalf of the California Organ Transplant Donor Network, which helped many patients with liver and other transplant organs. He himself was a recipient years ago. He noted that there was an organ donor drive going on in California, with thousands of persons on the waiting list for donor organs, the majority from diverse backgrounds. Mr. Young requested support to proclaim April as National Donor Month at next month's Council meeting. He encouraged residents and employees to become organ donors.

ANNOUNCEMENTS

Councilmember Polanski noted the recent award honoring the Milpitas Parks, Recreation and Cultural Resources Commission at the statewide conference. Most Commissioners attended the dinner in their honor in San Jose, along with the Mayor.

**ANNOUNCEMENT OF
CONFLICT OF INTEREST**

None

APPROVAL OF AGENDA

Motion: to approve the agenda, as amended

City Manager Williams noted the removal of Public Hearing Item No 2 since the tobacco shop project was withdrawn by the applicant.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Gomez requested Item No. 7 to go on the consent calendar.

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

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| * 7. Planning Commission Alternate Member | Approved appointment of Milpitas resident Mark Tiernan as the alternate member of the Milpitas Planning Commission, to a term that expires in December 2009. |
| * 8. Sister Cities Commission Recommendation | Approved the recommendation from the Sister Cities Commission to pursue a possible Sister City relationship with Hochheim, Germany. |
| *11. Ordinance No. 38.787 | Waived the second reading and adopted Ordinance No. 38.787 amending Sections 13 and 35 of the Milpitas Zoning Ordinance. |
| *14. Purchase of a Boom Truck from Altec | Adopted Resolution No. 7848 approving the sole source purchase of a boom truck from Altec Industries, Inc. in the amount of \$140,134.71, and approved the trade-in to Altec Industries, Inc. of the old boom truck for \$9,000. |
| *15. Final Acceptance for Street Resurfacing Project 2007 | Adopted Resolution No. 7849 granting final acceptance for the Street Resurfacing Project 2007, Project No. 4236. |
| *16. Initial Acceptance of Venus Pump Station Improvement | Adopted Resolution No. 7850 granting initial acceptance for the Venus Pump Station Improvement, Project No. 6101, subject to a one year warranty period, and reduction of the contractor's faithful bond to \$33,000. |
| *17. Final Acceptance of Public Improvements for Town Center | Adopted Resolution No. 7851 granting final acceptance and release of the contractor's bond for the Milpitas Town Center, Project No. 3153. |
| *18. Sales and Use Tax Sharing Agreement with KLA-Tencor | Authorized the City Manager to negotiate a Sales and Use Tax Sharing Agreement with KLA-Tencor. |
| *19. Contract with Cal-West Lighting & Signal Maintenance | Awarded the bid and authorized the City Manager to execute a contract for on-call Street light and traffic signal support with Cal-West Lighting & Signal Maintenance, Inc. for the not-to-exceed amount of \$100,000 per year, subject to approval as to form by the City Attorney. |
| *20. Contract with Priority 1 for Emergency Vehicle Equipment Installation | Awarded the bid and authorized the City Manager to execute a contract with Priority 1 for emergency vehicle equipment installation for the not-to-exceed annual amount of \$25,000, subject to approval as to form by the City Attorney. |
| *21. Award the Bid to Valley Crest Landscape Maintenance | Awarded the bid and authorized the City Manager to execute a contract for Park Irrigation System Rehabilitation with Valley Crest Landscape Maintenance, Inc. for the |

not-to-exceed amount of \$50,271 including sales tax, subject to approval as to form by the City Attorney.

*22. Change Order for Median Mulch and Street Tree Maint.

Authorized the City Engineer to execute the Contract Change Order with Forster & Kroeger, Inc. for Median Mulch and Street Tree Maintenance at Great Mall Parkway in the amount not-to-exceed \$7,200.

*23. Award the Bid to Republic ITS

Awarded the bid for vehicle speed feedback signs to Republic ITS, for the not-to-exceed amount of \$34,112.76.

PUBLIC HEARINGS

1. Ordinance and Resolution Related to Parking in the City

Planning Director James Lindsay noted more than 30 public meetings conducting outreach on parking issues had occurred before arriving at this meeting for the ordinance presented tonight. He thanked many staff and community members that participated.

Issues surrounding parking included a lack of multi-family residential parking and parking spillover in residential neighborhoods. In commercial areas, congestion happened where there were multiple restaurants, related to project design. The City had no minimum dimensions for garages in residences. Consistency was sought for similarly designed residences. Also, the City could reduce allowance of the amount of maximum tandem parking when recommended, to reduce congestion. Minimum dimensions for residential garages were needed along with clear language in CC&Rs for homeowner associations.

For restaurants, staff would try to delineate better the type of restaurant and thus the amount of space in a restaurant dining area, rather than merely counting the number of seats in the restaurant to calculate parking requirements. Staff would consider whether it was a sit-down or fast food restaurant.

Councilmember Giordano asked staff about CC&Rs for associations. She felt it was very good to put in the clear language for new developments. She inquired who would monitor parking then, and if there was any element for enforcement. Staff responded that City staff reviewed CC&Rs before a project developer would submit those to the state. The homeowners association in any development must enforce its own rules.

Mayor Livengood then opened the public hearing.

Frank DeSmidt, a member of the Parking Task Force, complimented the staff work to date. However, there was a request for less tandem parking and less guest parking at restaurant developments, which he termed a quality of life issue.

(1) Motion: move to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of:

AYES: 5
NOES: 0

Vice Mayor McHugh asked for staff to respond to Mr. DeSmidt on less tandem parking. Mr. Lindsay reported that the City Council was presented with the Planning Commission's recommendation this evening, along with staff's, which was arrived at after many public meetings. Perhaps, on newer residential projects, a distinction could be made with structured parking (v. tandem) which worked well in new buildings. He mentioned KB Home's Terra Serena project, as an example. That option could be less successful in private garages. Staff suggested that disclosure to homeowners was key.

City Attorney Ogaz read aloud the title of Ordinance No. 38.785, "An Ordinance of the City Council of the City of Milpitas Amending Title XI Chapter 10, Section 53 for the

Purpose of Changing the Parking Ordinance.”

(2) Motion: to waive the first reading beyond the title of Ordinance No. 38.785 to amend Section 53 of the Zoning Ordinance

Motion/Second: Vice Mayor McHugh/ Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to introduce Ordinance No. 38.785

Motion/Second: Vice Mayor McHugh/ Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

(4) Motion: to adopt Resolution No. 7844 amending the Midtown and Transit Area Specific Plans regarding changes to parking regulations

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

2. Appeal of Planning Commission CUP decision

This item was removed from agenda, due to the fact that the project was withdrawn.

UNFINISHED BUSINESS

3. Ordinance No. 196.10 Related to Noise and Start Time of Solid Waste Collection

Utility Engineer Kathleen Phalen reported no noise complaints in the first six months of the early morning solid waste pick-up start time of 6:00 AM. The City’s agreement with contractor Allied Waste would be amended to allow continued pick-up at this time if the City Council adopted the proposed ordinance.

Councilmember Giordano asked if this was city-wide and staff replied affirmatively.

Councilmember Polanski asked if it was solely for solid waste collection haulers, under contract to City for recyclable collection and yard trimming, in addition to solid waste. Staff replied yes.

Vice Mayor McHugh stated he was pleased to hear that there were no complaints. Also, he felt that one of the reasons for the change in hours - for less traffic congestion later in the day - was positive for the community.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 196.10, “An Ordinance of the City Council of the City of Milpitas Amending Chapter 213 of Title V of the Milpitas Municipal Code Relating to Noise Abatement.”

(1) Motion: to waive the first reading beyond the title of Ordinance No. 196.10

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to introduce Ordinance No. 196.10 amending Section 213-3 of the Noise Ordinance

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(3) Motion: to receive from City Engineering staff the second quarterly noise report during the trial period for residential solid waste collection 6:00 a.m. start time

Motion/Second: Councilmember Gomez/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA 1. CALL TO ORDER Mayor/Agency Chair Livengood called to order the regular meeting of the Milpitas Redevelopment meeting jointly with the City Council, at 7:33 PM.

ROLL CALL **PRESENT:** Chair/Mayor Livengood, Vice Chair/Vice Mayor McHugh, Agency/Councilmembers Giordano, Gomez and Polanski

ABSENT: None

RA 2. MINUTES Motion: to approve the meeting minutes of the Redevelopment Agency meeting of March 3, 2009, as submitted

Motion/Second: Agency/Councilmember Gomez / Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

RA 3. Agenda Approval and Consent Calendar Motion: to approve the agenda and consent calendar items (*), as submitted

Motion/Second: Agency/Councilmember Gomez / Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

RA 4. 5th Amendment to RDA Plan Area Economic Development Manager Diana Barnhart provided a map displaying the Great Mall redevelopment project area which would expire in 2010, including two non-contiguous areas. She defined the need to act to extend the life of the plan area. Such action would not change non-tax increment status of the Great Mall, while it would allow for two freeway advertising signs.

Next action steps included the public hearing notice to be prepared and sent out to all property/business owners, and to mail it to taxing agencies. Staff requested that the City Council and Redevelopment Agency adopt two resolutions.

Motion: to approve the following two actions:

(1) to adopt Redevelopment Agency Resolution No. RA 325 approving the Report to the City Council for the proposed Fifth Amendment to the Great Mall Redevelopment Plan, submitting the Report to the City Council, and scheduling a Joint City Council/Redevelopment Agency Public Hearing on the proposed Amendment for April 21, 2009; and,

(2) to adopt City of Milpitas Resolution No. 7845 accepting report to the City Council for the proposed Fifth Amendment to the Great Mall Redevelopment Plan and calling for a Joint City Council/Redevelopment Agency Public Hearing on the proposed Amendment for April 21, 2009

Motion/Second: Vice Chair/Vice Mayor McHugh / Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

RA 5. New Project Areas and RFP

Economic Development Manager Diana Barnhart described the purpose of the feasibility study and findings to be presented when concluded, which would not bind the Agency/Council to create redevelopment areas. She defined Study Areas No. 1, 2, 3 and the LIFT Zone area.

Councilmember Gomez commented that the study area near Selwyn be expanded, up to Edsel Drive, and a broader area that he defined. Vice Mayor McHugh was supportive of that statement.

Councilmember Polanski agreed with Mr. Gomez that that area should be broader, in the Selwyn study area, at least to Yosemite Drive. She asked for further description of the LIFT zone area and apartment buildings included.

Councilmember Giordano was not certain if the end of one zone was multi-family units or not? City Manager Williams stated that they were.

The Economic Development Director sought to obtain consultant advice on whether to merge the Redevelopment Agency areas, or separate them, to include tax increment or not. Additionally, part of the RFP would be to evaluate the effectiveness of extending the life of Town Center and two other older Agency areas.

She provided a schedule of next steps in this process. Vice Mayor McHugh asked about the aggressive schedule and whether it was reasonable. Staff talked with an RDA consultant and special counsel, who both advised it was standard.

Councilmember Gomez asked about what kind of responses would be expected. Also, he wondered when the School District and the County would respond on these areas. Staff replied it was not time for that response. Notification to those agencies would occur if or when the redevelopment areas were proposed to be extended.

Mayor Livengood asked Mr. Gomez to define exactly the area on the map of the Selwyn study area. This third study area was determined to include the commercial/ retail area roughly bounded by E. Calaveras Blvd on the north, Penintencia Creek to the south and Dempsey Road to the west. It would include the multi-family residential communities to the south of Penintencia Creek between Dempsey Road and Park Victoria Avenue to Yosemite Drive and along the cross streets.

Motion: to approve the Request For Proposals for the evaluation of new Redevelopment Project Areas and extension of time for the existing area's plan effectiveness and the collection of tax increment, and direct staff to issue the Request for Proposals, and including the revised description of the southern boundary of the Selwyn study area

Motion/Second: Vice Chair/Vice Mayor McHugh / Agency/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

***RA 6. Resolution for Initial Acceptance of Project 8183**

Adopted Resolution No. RA 326 granting initial acceptance of the Corporation Yard Canopy, Project No. 8183, and authorize the reduction of the contractor's faithful performance bond to \$44,000.

RA 7. ADJOURNMENT

Chair/Mayor Livengood adjourned the Redevelopment Agency meeting at 7:52 PM.

REPORTS OF OFFICER

4. Direct Staff to Address the Blighted Conditions

Mayor Livengood brought this issue to Council upon noticing that an old lodge and former mobile home park were in disrepair in the south part of the City. He asked the City Manager for a report, asking who had worked with the property owner to clean up the area to eliminate graffiti and blight conditions. These two properties were for sale, with some interest from developers. The City Manager noted staff was available to respond further.

Mayor Livengood had remaining questions. When could the Council expect to see merely a simple dirt lot there, with structures all razed? The City Manager responded further, about demolishing those buildings, partly dependent on how fast the sale of property occurred. He commented that within the next 30 days, staff should have more definitive answers.

Councilmember Gomez left the dais at 7:55 PM.

Finally, Mayor Livengood remarked that he was satisfied that staff was taking action. He wanted a more robust approach to issues such as this one, in the future. He sought more ideas on how the City would be pro-active on matters such as the blight at this location, to be nimble and get to them quicker.

Motion: to direct staff to return to the City Council on April 21, 2009 with options to address the blighted conditions of the properties located on the east side of South Main Street near Montague Expressway

Motion/Second: Councilmember Giordano/Councilmember Polanski

Motion carried by a vote of: AYES: 4
NOES: 0
ABSENT: 1 (Gomez)

5. Expansion of Economic Development Commission

Mayor Livengood expressed his goal to add two additional members to the Economic Development Commission, representing residents and the retail segment of the business marketplace.

Councilmember Polanski asked whether additional members will add broader representation for the community on the Commission. Mayor Livengood said it would add the much needed retail segment, with an additional resident as well.

Councilmember Gomez returned to the dais at 7:59 PM.

Councilmember Giordano asked about attendance of Commissioners at the monthly meetings, and staff confirmed there were no problems with regular attendance at the Commission's regular meetings.

Motion: to approve Mayor's recommendation to amend the Economic Development Commission's by-laws to increase the regular membership from nine to eleven Commissioners, with one member representing retail and the other representing Milpitas residents

Motion/Second: Councilmember Polanski/Vice Mayor McHugh

Motion carried by a vote of: AYES: 5
NOES: 0

6. Economic Development Commission Appointments

Mayor Livengood presented his recommendations for appointments and re-appointments to the Economic Development Commission.

Councilmember Polanski asked about the process of how Commissioners were notified of expiration of their terms. City Clerk Lavelle responded, stating that if the Commission staff liaison did not verbally notify the Commissioner, she would send an e-mail expressing the upcoming term expiration. The Councilmember expressed her desire to formalize that notification to occur within 60 days.

City Attorney Ogaz replied that staff could bring back written changes to the City Council handbook to accommodate her request.

Motion: to approve the following recommendations from the Mayor:

Re-appoint Robyn Cornell representing hotels to a term that expires in April 2012.

Re-appoint Donald Peoples representing business to a term that expires in April 2012.

Re-appoint Charlene Tsao representing restaurants to a term that expires in April 2012.

Re-appoint Zeya Mohsin as Alternate No. 1 to a term that expires in April 2011.

Newly appoint Michelle Bau representing residential real estate to a term that expires in April 2012.

Newly appoint Jeanne Serpa representing the Chamber of Commerce to a term that expires in April 2012.

Appoint current commissioner Minh Nguyen to a new seat representing Milpitas residents to a term that expires in April 2012

Newly appoint Steve Tao representing commercial real estate to the existing term that expires in April 2011.

Motion/Second: Vice Mayor McHugh/Councilmember Giordano

Motion carried by a vote of:

AYES: 5

NOES: 0

NEW BUSINESS

9. City of San Jose presentation Utility Engineer Kathleen Phalen introduced City of San Jose staff Mr. John Stufflebean, the Director of Environmental Services Department. Mr. Stufflebean provided an overview of the Water Pollution Control Plant Master Plan, and its required update. The plant served eight cities including Milpitas, serving about 16,000 businesses in the Valley, using up to 11 million gallons per day capacity. He outlined the four major goals in the new Master Plan.

Flexibility in potential land uses for the plant's land was needed for the long-term future (he showed an example in Munich, Germany with a soccer stadium next to a plant). Mr. Stufflebean described several of the public input opportunities, and that an Environmental Impact Report would be needed.

Mayor Livengood responded that the plant should be 100% energy efficient, with renewal energy produced. There should be discussion about the large pieces of land, for Milpitas, just to the east of Coyote Creek (near McCarthy Ranch). The Mayor thought that land use decisions rested with the Milpitas City Council - not the City of San Jose. He was concerned about any change in vehicular traffic on that land, desiring no harm to the McCarthy Ranch retail space. He thanked the San Jose staff member for reporting.

Councilmember Giordano left the dais just prior to the conclusion of this presentation and returned very shortly thereafter.

No vote was taken on the oral report.

10. Economic Development
Update

Economic Development Director Diana Barnhart reported good news first: with regard to KLA Tencor sales and use tax sharing, Marina Foods going in to replace the Lucky store on N. Milpitas Blvd, WalMart expansion application received, a new yogurt shop at Town Center coming, an increase in home occupation and small business licenses, and the plan for Seafood City (a grocery store and restaurant section in it) at the former

Home Depot site.

Mayor Livengood asked questions of Planning staff regarding the development project with Seafood City. Staff explained the design and that it was somewhat like a small shopping mall and similar to newer developments in Asia.

The Mayor and Vice Mayor questioned the plan for WalMart, regarding the grocery expansion, as they recalled that there may have been prior City Council action on some type of grocery store restriction for that retailer. Staff agreed to research.

Ms. Barnhart reported no movement regarding the former Mervyn's site at Town Center, nor at the large McCarthy Ranch retail sites (former Office Depot and Western Warehouse). The local unemployment rate jumped from 4.4% to 9.6% from January 2008 to January 2009.

Vice Mayor McHugh thought it was good news that the Economic Development Manager had attended a recent retail conference. Ms. Barnhart spoke of interest in Milpitas sites that was expressed while she attended the conference in Monterey last month. AutoZone, for example, asked about retail space in this City. Smart & Final had come out with a unique concept: a farmer's market in a warehouse store. Other grocery outlets were trying to expand. Mr. McHugh asked her for regular updates on this topic.

Finally reported was the International House of Pancakes was slated to take over the former Lyon's restaurant site, although it had not yet applied for a permit.

Councilmember Gomez commented on the hotel vacancy rates that were suffering. He inquired about convention & visitors money that might go to a joint market effort along with Milpitas hotels. He suggested some TOT (hotel tax) revenue could be matched by local hotels. Foreclosure assistance was another idea he'd like to see in Milpitas and that staff should find out what other cities were doing on that issue to help residents.

Mayor Livengood commented that there would soon be recommendations on freeway signs from the Economic Development Subcommittee, along with some actual outreach on shopping centers that were looking down lately. He liked the idea of leveraging dollars, to match funds with hotels. A foot in the door was needed for hotels when large conferences were held nearby. Increased revenues should be the end result for the businesses and the City.

The Mayor thanked Ms. Barnhart for her report, and no vote was taken.

ORDINANCE

One ordinance was adopted on the consent calendar.

RESOLUTION

Four resolutions were adopted on the consent calendar.

12. Approving Memorandum of Understanding with Mid-Management and Confidential employee group

Human Resources Director Carmen Valdez summed up the terms of the proposed Memorandum of Understanding with the Mid Management and Confidential employees (United Public Employees of California, UPEC Local 792, AFL-CIO).

Posting of a notice of the availability of the document had met the 15-day posting requirement, per the Open Government ordinance. \$229,000 was the approximate cost of the Memorandum over three years.

Motion: to adopt Resolution No. 7846 authorizing the new Memorandum of Understanding with the Mid-Management and Confidential employee group covering the period January 1, 2009 through December 31, 2011

Motion/Second: Councilmember Giordano/Vice Mayor McHugh

Motion carried by a vote of:

AYES: 4

NOES: 1 (Gomez)

13. Approving Memorandum of Understanding with Milpitas Police Officers Association

Human Resources Director Carmen Valdez summed up the terms of the proposed Memorandum of Understanding with the Milpitas Police Officers Association (MPOA).

Posting of a notice of the availability of the document had met the 15-day posting requirement, per Open Government ordinance. \$1,923,000 was cost of the contract over the three year period.

Motion: to adopt Resolution No. 7847 authorizing the new Memorandum of Understanding with the MPOA employees covering the period January 1, 2009 through December 31, 2011

Motion/Second: Vice Mayor McHugh/Councilmember Polanski

Motion carried by a vote of:

AYES: 3

NOES: 2 (Livengood, Giordano)

Councilmember Giordano reported that she was not opposed to giving police officers a raise, but that she had wanted a mitigated amount between what staff had recommended and what the MPOA had requested. She felt that a limited amount in raises would be better than potential layoffs down the road.

BIDS & CONTRACTS

Six items were approved on the consent calendar.

ADJOURNMENT

Mayor Livengood adjourned the City Council meeting at 8:50 PM.

The foregoing minutes were approved by the Milpitas City Council as amended on April 7, 2009.

Mary Lavelle
City Clerk